

RQ-903



TEXAS EDUCATION AGENCY

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MIKE MOSES
COMMISSIONER OF EDUCATION

July 16, 1996

The Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Supreme Court Building
Austin, Texas 78711-2548

RECEIVED
JUL 18 1996
Opinion Committee

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JUL 17 1996
FIRST ASSISTANT ATTORNEY GENERAL
ATTORNEY GENERAL'S OFFICE

Dear General Morales:

We are asking your opinion regarding the authority of the State Board of Education (the "Board") to consider certain factors in deciding to adopt or reject textbooks for use in the public schools. Members of the Board feel that they should be allowed to reject certain textbooks based on content, as the Board has done in the past. Because of concerns regarding its authority under the current Education Code, the Board adopted a rule with the language found at Exhibit "A" but conditioned the effectiveness of that rule upon a determination that your office had found it to be within the rulemaking authority granted to the Board. A complete copy of the rule as filed with the Texas Register will be transmitted as soon as it is available.

The Texas Legislature completely rewrote the Texas Education Code during its 1995 session in what is generally referred to as "Senate Bill 1"¹. The previous law regarding textbook adoption was found at Chapter 12 of the former Education Code, attached as Exhibit "B". Under that chapter, the Board adopted its previous rules governing textbook adoption, attached as Exhibit "C"². Section 67.7 of the prior rules allowed the Board to reject a textbook for state adoption if it violated any of several provisions regarding objectionable content. Pursuant to Section 69 of Senate Bill 1, textbook adoptions in progress on the effective date of Senate Bill 1 will continue under the prior rule.

Senate Bill 1 enacted new Chapter 31 regarding textbook adoption. The relevant sections are 31.003, which grants the Board rulemaking authority and Sections 31.023 and 31.024 which deal with the state adoption process and the two lists of textbooks available for local adoption. Section 28.002 of the Education Code is also relevant to the Board's role in adopting textbooks. The Board considered rules at its July 11 and 12 meeting that did not contain the provisions previously found at Rule 67.7. A copy of the agenda item proposing those rules is attached as Exhibit "D". The Board amended the proposed rules to include the language in Exhibit A, but delayed the effective date of the section containing that language. That section will not take effect until 20 days from publication of a notice that

¹ Act of May 27, 1995, ch. 260, 1995 Tex. Sess. Law Serv. 2207 (Vernon).

² State Bd. Ed., 19 TEX. ADMIN. CODE §67.7 (West Jan. 26, 1996).

the Board has determined an Attorney General's opinion has found it to be within the rulemaking authority of the Board.

We have also included with this submission the opinion of agency counsel previously provided the Board, correspondence from legislators regarding the intent of Senate Bill 1, and all written comments received by the Board at the public hearings held at its July meeting. Tapes of the committee hearings, public testimony and State Board consideration of the proposed rules are available should your office need them.


We would also appreciate your counsel regarding "ancillary" items which are provided by textbook publishers free of charge to school districts. Does the Board's authority to adopt or reject textbooks extend to consideration of ancillary items? Do all materials which a publisher provides a school district come within the definition of "textbook" in section 31.002(3) or may a publisher choose what materials are submitted for consideration under Section 31.023? May the Board reject a textbook submitted for consideration because of the nature of an ancillary item which has not been submitted?

We would appreciate your expedited attention to this request. Should you need any additional information, please feel free to contact David Anderson, Chief Counsel, at (512) 463-9720.

Sincerely,



Mike Moses
Commissioner of Education



Jack Christie, D.C., Chairman
State Board of Education

cc: Members, State Board of Education